

Enrolled
House Bill 4134

Sponsored by Representatives KENY-GUYER, FAHEY, VIAL, MEEK, Senators FREDERICK, WINTERS; Representatives ALONSO LEON, BYNUM, GREENLICK, HERNANDEZ, NOBLE, PILUSO, POWER, REARDON, SALINAS, SANCHEZ, SMITH DB, STARK, WITT, Senators BENTZ, DEBOER, GELSER, GIROD, HANSELL, KNOPP, LINTHICUM, MANNING JR, MONNES ANDERSON, OLSEN, STEINER HAYWARD, THATCHER, THOMSEN, WAGNER (Pre-session filed.)

CHAPTER

AN ACT

Relating to real property; creating new provisions; amending ORS 93.270 and 93.272; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1)(a) Notwithstanding ORS 93.272, any owner of record of real property that is subject to an instrument conveying or contracting to convey fee title to the property, or a declaration recorded under ORS 94.580, that contains a provision that is in violation of ORS 93.270 (1)(a) may file a petition under this section to remove that provision from the title to the property. The petition shall be filed in the circuit court for the county in which the property is located. For a petition filed under this section, the court may not charge any filing fees to the petitioner and may not award a prevailing party fee to any party.

(b) An owner may not use this section for removal of provisions that are in violation of both ORS 93.270 (1)(a) and (b).

(2) A petition filed under this section must contain:

(a) The name and mailing address of the person filing the petition;

(b) The name and mailing address of all owners of record of the property;

(c) The legal description of the property subject to the provision in violation of ORS 93.270 (1)(a); and

(d) A clear reference to the provision claimed to be in violation of ORS 93.270 (1)(a).

(3)(a) Notwithstanding ORCP 7, notice and a copy of the petition shall be served on all owners of record of the property via registered or certified mail.

(b) The petitioner shall submit to the court a sworn affidavit certifying the petitioner made a good faith effort to notify, in the manner required under this subsection, all owners of record of petitioner's intent to file the petition.

(4) The notice required under subsection (3) of this section shall inform the owners of record that:

(a) The petition seeks the removal of a provision that is in violation of ORS 93.270 (1)(a) from the title to the property;

(b) The person served may request a hearing within 20 days after service of the petition; and

(c) The court is authorized to enter a default judgment removing the provision if no hearing is requested by the owners of record.

(5) If no request for hearing is made by any person served under subsection (3) of this section within 20 days after service on that person, the court shall enter a judgment removing the provision from the title to the property if the court determines that the provision is in violation of ORS 93.270 (1)(a).

(6) If a hearing is requested by any person served under subsection (3) of this section, the clerk of the court shall schedule a hearing within 20 days after the filing of the request for a hearing. The clerk of the court shall mail notification of the hearing date to the petitioner and to all owners of record listed in the petition.

(7) At any hearing under the provisions of this section, the sole issue that shall be decided by the court is whether the provision that is the subject of the petition is in violation of ORS 93.270 (1)(a). The matter shall be tried to the court sitting without jury. If the court finds that the provision is not in violation of ORS 93.270 (1)(a), the court shall dismiss the petition. If the court finds that the provision is in violation of ORS 93.270 (1)(a), the court shall enter a judgment removing the provision from the title to the property.

(8) If a court finds only part of a provision to be in violation of ORS 93.270 (1)(a) under this section, the court shall enter a judgment removing only that part of the provision that is in violation.

(9) For the purposes of this section, “owner of record” has the meaning given that term in ORS 93.272.

SECTION 2. ORS 93.270 is amended to read:

93.270. (1) A person conveying or contracting to convey fee title to real property, **or recording a declaration under ORS 94.580**, may not include in an instrument for that purpose a provision:

(a) Restricting the use of the real property by any person or group of persons by reason of race, color, religion, sex, sexual orientation, national origin or disability.

(b) Restricting the use of the real property:

(A) As a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450 or as the premises of an exempt family child care provider participating in the subsidy program under ORS 329A.500; or

(B) By any home or facility that is licensed under ORS 443.400 to 443.455 or 443.705 to 443.825 to provide residential care alone or in conjunction with treatment or training or a combination thereof.

(2) Any provision in an instrument executed in violation of subsection (1) of this section is void and unenforceable.

(3) An instrument that contains a provision restricting the use of real property in a manner listed in subsection (1)(b) of this section does not give rise to any public or private right of action to enforce the restriction.

(4)(a) An instrument that contains a provision restricting the use of real property by requiring roofing materials with a lower fire rating than that required in the state building code established under ORS chapter 455 does not give rise to any public or private right of action to enforce the restriction in an area determined by a local jurisdiction as a wildfire hazard zone. Prohibitions on public or private right of action under this paragraph are limited solely to considerations of fire rating.

(b) As used in this subsection, “wildfire hazard zones” are areas that are legally declared by a governmental agency having jurisdiction over the area to have special hazards caused by a combination of combustible natural fuels, topography and climatic conditions that result in a significant hazard of catastrophic fire over relatively long periods each year. Wildfire hazard zones shall be determined using criteria established by the State Forestry Department.

SECTION 3. ORS 93.272 is amended to read:

93.272. (1) **Except as otherwise provided in section 1 of this 2018 Act**, any owner of record of real property that is subject to an instrument conveying or contracting to convey fee title to the

property, or a declaration recorded under ORS 94.580, that contains a provision that is in violation of ORS 93.270 may file a petition to remove that provision from the title to the property. The petition shall be filed in the circuit court for the county in which the property is located. *[No fee shall be charged for the filing of the petition.]* **For a petition filed under this section, the court may not charge any filing fees to the petitioner and may not award a prevailing party fee to any party.** The petition shall contain:

- (a) The name and mailing address of the person filing the petition;
- (b) The name and mailing address of all owners of record of the property;
- (c) The legal description of the property subject to the provision in violation of ORS 93.270; and
- (d) A clear reference to the provision claimed to be in violation of ORS 93.270.

(2) Notice and a copy of the petition shall be served on all owners of record in any manner provided for in ORCP 7. The notice shall inform the owners of record that:

(a) The petition seeks the removal of a provision that is in violation of ORS 93.270 from the title to the property;

(b) The person served may request a hearing within 10 days after service of the petition; and

(c) The court is authorized to enter a default judgment removing the provision if no hearing is requested by the owners of record.

(3) The petitioner shall file with the court proof of service in the manner provided in ORCP 7 F. If no request for hearing is made by any person served within 10 days after service on that person, the court shall enter a judgment removing the provision from the title to the property if the court determines that the provision is in violation of ORS 93.270.

(4) If a hearing is requested by any person served under subsection (2) of this section, the clerk of the court shall schedule a hearing within 20 days after the filing of the request for a hearing. The clerk of the court shall mail notification of the hearing date to the petitioner and to all owners of record listed in the petition.

(5) At any hearing under the provisions of this section, the sole issue that shall be decided by the court is whether the provision that is the subject of the petition is in violation of ORS 93.270. The matter shall be tried to the court sitting without jury. If the court finds that the provision is not in violation of ORS 93.270, the court shall dismiss the petition. If the court finds that the provision is in violation of ORS 93.270, the court shall enter a judgment removing the provision from the title to the property.

(6) If a court finds only part of a provision to be in violation of ORS 93.270 under this section, the court shall enter a judgment removing only that part of the provision that is in violation.

(7) For the purposes of this section, "owner of record" means a person having any legal or equitable interest in property, including, but not limited to, a purchaser, lienholder or holder of any security interest in such property whose interest is recorded in the public records provided for by Oregon statutes where the owner's interest must be recorded to perfect a lien or security interest or provide constructive notice of the owner's interest.

SECTION 4. Section 1 of this 2018 Act and the amendments to ORS 93.272 by section 3 of this 2018 Act apply to petitions for removal of provisions in violation of ORS 93.270 (1)(a) filed on or after the effective date of this 2018 Act.

SECTION 5. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.

Passed by House February 14, 2018

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 26, 2018

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2018

Approved:

.....M,....., 2018

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2018

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Dennis Richardson, Secretary of State